QUESTION PRESENTED

Petitioners concede for purposes of their petition, that the respondents pleadings are sufficient to allege the sale of an "investment contract" as that term is defined by the Securities Act, and rely solely on the proposition that the complaint does not allege a sufficient use of the mails to constitute a violation of Sec. 12 (2) of the Act.

STATEMENT OF FACTS

The statement of fact made by petitioners is partially correct. However, they do not state the transactions concerning the care contracts with accuracy. In most of the sales, the care contracts were dated from two to four weeks after the sales contracts, warranty deeds, notes and deeds of trust. (R. 8, 10, 11, 13, 14, 16, 43). The reason for this was that at the time of the sales, the land was not planted to citrus trees, and while the purchasers were induced to sign a management contract at that time, all of the blank spaces were left blank until a later date because the obligation to pay for care could not begin until the trees had been planted. This meant that the sales were not really completed until some time after the purchasers had returned to their homes in other parts of the State, the Development Company had planted the trees, and the Management Company had a beginning date for their operation.

When this was determined, the Management Company then filled in the blank contract (R. 46-53) and delivered it by mail to the purchasers.[1] The petit-

[1] Petitioners have taken the oral depositions of six of the respondents and it has been established that the Management Contract were completed as above stated and also that statements for work done under the Management Contracts, and payments by the Purchasers were forwarded through the U. S. Mails.

ioners assertion that the transactions were completely entered into and all agreements made and concluded by face to face personal discussions in Hidalgo County, Texas, is not a correct statement.

We further wish to point out to the Court that subsequent to the original purchases, respondents continued to make a continuing investment in the property through their payment for the management or care service. (R. 4, 19, 22-23). The Management Company, to induce this continuing investment sent monthly statements and reports to the respondents through the United States Mails, and it is alleged that these reports contained false and fraudulent statements.

REASONS FOR DENYING THE WRIT

1. The point involved in this suit is of great importance to investors attempting to recover their losses caused by misrepresentation and fraud in the sale of securities. In order that this Court may decide the point in accordance with the intention of Congress we believe that it is of the utmost importance that the facts be fully developed in the trial court.

As we pointed out in our statement of the case, the date of the Warranty Deed and Sales Contracts, was in most of the cases different from the date of the Management Contract. In addition, it is alleged in the complaint that continuing misrepresentations were made to the respondents through the United States Mails, in the form of false statements of work and materials being used in connection with the Citrus Groves, for the purpose of inducing respondents to continue forwarding their money (also through

APPENDIX

77q. Fraudulent interstate transactions.

(a) It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly —

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

(b) It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(c) The exemptions provided in section 77c of this title shall not apply to the provisions of this section. May 27, 1933, c. 38, Title I, 17, 48 Stat. 84.

I, Garland F. Smith, hereby certify that on this 25th day of November, 1953, I did mail by prepaid U. S. Mail at Weslaco, Texas, copies of the foregoing brief to counsel for Petitioners, properly addressed.

Garland F. Smith

Garland F. Smith
516 Texas Blvd.
Weslaco, Texas.